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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twentieth session

SUMMARY RECORD OF THE 11th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 3 May 1999, at 10 a.m.

Chairman: Mrs. BONOAN-DANDAN

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 8) (continued)

Third periodic report of Denmark (E/1999/104/Add.15; HRI/CORE/1/Add.58 (core document); E/C.12/Q/DEN/1 (List of issues); HR/CES/CR/NONE/1999/3 (Replies of the Danish Government to the list of issues))

1. At the invitation of the Chairperson, the delegation of Denmark took places at the Committee table.

2. Mr. LEHMANN (Denmark) recalled that, in 1999, the Danes had celebrated the 150th anniversary of the adoption of their Constitution, which had been the basis for the creation of a stable, democratic society with deep-rooted social welfare programmes. However, in building their nation, Danes had not stood aloof from the problems of other nations, in particular the developing countries. Accordingly, Denmark's development assistance in 1997 had amounted to US$ 1.8 billion, representing 1 per cent of its gross domestic product, the highest ratio of any donor country and well above the United Nations target of 0.7 per cent.

3. Since the third periodic report of Denmark had been published in 1997, he wished to inform the Committee of some changes that had occurred since then. One involved labour market policy, which had been playing an increasingly important role in economic policy. With the unemployment rate down to below 6 per cent, it was currently possible to integrate the weakest groups of unemployed persons in the labour market and achieve a significant reduction in the number of persons in the marginalized group. In that regard, one of the major challenges was to ensure an ample supply of labour, especially since current demographic development, marked by a decrease in the proportion of young people, no longer contributed to the growth of the labour force. That meant that labour market policy in the next three to five years would have to be concentrated on persons over the age of 50, especially women.

4. Another important change related to measures in favour of refugees and immigrants. On 26 June 1998, the Danish Parliament had adopted the Act on the Integration of Aliens in Denmark (Integration Act), which had entered into force on 1 January 1999. The objective of the Act was to make refugees and immigrants contributing members of Danish society on an equal footing with Danish nationals. That would be done by considerably expanding integration efforts, both quantitatively and qualitatively, and three-year integration offers would be made to refugees and immigrants alike. Through those programmes, which included language lessons and an initiation course in the functioning of Danish society, new immigrants would be better placed to find employment.

5. A third new fact to report was the establishment of the Committee which was responsible for studying the possible incorporation of the Covenant into Danish internal law and which was to begin its duties in June 1999.

6. In conclusion, he apologized on behalf of his Government for its failure to provide specific information with regard to the Faeroe Islands and assured it that the omission would be remedied in due course. He stressed the importance his Government attached to constructive dialogue with all the bodies created under the human rights instruments and assured the Committee members of Denmark's unequivocal support for its efforts to promote the economic, social and cultural rights of all peoples of the world.

7. The CHAIRPERSON invited the members of the Committee to make their comments or ask questions on the list of issues (E/C.12/Q/DEN/1).

General legal framework within which human rights are protected - information and publicity concerning the rights covered by the Covenant

8. Mr. PILLAY requested further details on the status of the Covenant in the domestic legal system. In the reply to question 1, the Danish Government had indicated that the Covenant had not been incorporated into domestic law on the ground that "it would not offer better legal protection of the individual". That statement was questionable; in its General Comment No. 9 (1998) on the duty to give effect to the Covenant in the domestic legal order, the Committee had adduced various reasons which militated in favour of the incorporation of the Covenant into the legal systems of States parties. In paragraph 104 of its core document (HRI/CORE/1/Add.58), moreover, the Danish Government had itself invoked a similar justification for the incorporation of the European Convention on Human Rights into its legal system. In that document, the Government claimed that it was a matter of "opening the eyes of the legal practitioners of the ECHR ... and improving the possibility of the national judges of having a human rights-updated level of protection". Could the delegation say whether the Danish Government was prepared to use the same arguments to defend the incorporation of the Covenant before the Committee to whose establishment Mr. Lehmann had referred?

9. Mr. RIEDEL pointed out that, in its reply to question 3 on the elaboration of an optional protocol to the Covenant, the Danish Government had questioned the usefulness of an individual complaint procedure, "due to the nature of the rights contained in the Covenant". Apart from being vague, did that reply mean that the legal status of economic, social and cultural rights was inferior to that of civil and political rights? In the light of the Committee's General Comment No. 3 (1989) on the nature of States parties' obligations and the fact that each of the rights provided for in the Covenant could be invoked in the courts, there was no reason not to adopt such a protocol. What was the Danish Government's exact position on that issue? He also wished to know why NGOs were not involved in the preparation of Denmark's periodic reports, especially since they played a crucial role in the activities of the United Nations in general and of the Committee in particular.

10. Mr. THAPALIA said that the new Act on the integration of refugees and immigrants should in principle allow the latter to be rapidly integrated into Danish society, for example, by enabling them to obtain employment shortly after their arrival in the country. From information he had received, there was a huge disparity between the daily income allocated to refugees and the social welfare assistance paid to native Danes. The authorities had also

admitted that new immigrants would receive an income lower than that of established immigrants. Did that decision not violate the provisions of the 1951 Convention relating to the Status of Refugees? Given the uncertainty of the economic situation, he also wished to know what proportion of the budget was allocated to social sectors such as housing, employment, education and health.

11. Mr. SADI said that, in its written replies, the Government had stated that the Covenant could be invoked in the Danish courts. Could that statement be backed up with specific cases, including court rulings? The reply to question 4 was somewhat vague, making no reference to specific measures taken to publicize the Covenant.

12. Mr. KOUZNETSOV asked what measures were being taken to ensure that the Covenant was implemented by all agents of the State and whether they had been successful. Denmark's experience in that regard would be very useful to the Committee, which could use it as a reference point for its dialogues with States parties. With regard to the examples of court rulings requested by Mr. Sadi, the Danish Government might, as had already been done, communicate them to the Committee electronically, on a diskette, for example.

13. Mr. GRISSA said he understood that refugees obtained employment shortly after their arrival in Denmark. He wondered how that was possible in a country with an 11 per cent unemployment rate. Did that mean that refugees were given priority over Danes? If so, could that constitute discrimination against native Danes?

14. Mr. CEAUSU asked what means had been used to publicize the third periodic report of Denmark. He had understood that the Danish Government had chosen not to involve NGOs in the preparation of the document, but, rather, to send them copies once the report had been submitted to the competent body. Could the delegation provide a list of the NGOs that had actually received copies?

15. Mr. AHMED said that the idyllic portrayal of Denmark's human rights situation had been tarnished by a number of cases of discrimination against women, teachers and foreigners. He noted that xenophobia was a relatively recent phenomenon in Denmark and that the Committee on the Elimination of Racial Discrimination had been disturbed by the indulgence with which radio broadcasts of racist ideas had been met during the recent parliamentary elections (CERD/C/304/Add.35, para. 12). Also, Denmark had not yet signed the ILO Conventions concerning migrant workers. ILO statistics showed that unemployment was much higher among immigrants than among the rest of the population. The new Integration Act allocated less financial assistance to new arrivals during their first three years than to foreigners already installed. The Danish Government had agreed with the Office of the United Nations High Commissioner for Refugees (UNHCR) on the need to review that law. He would like to know the delegation's stance on the matter.

16. Mr. LEHMANN (Denmark), replying to Mr. Pillay's question, said that the Covenant had been ratified and published in the Official Gazette, thus

enabling each and every citizen to invoke it in the courts. The courts were instructed to interpret national legislation in a way that did not conflict with the country's international obligations.

17. In reply to Mr. Sadi's question, he said that, to the best of his knowledge, there had been no court rulings based on the Covenant. Although the two human rights Covenants enjoyed the same status, he wondered whether civil and political rights were not easier to implement than economic, social and cultural rights. It would be inaccurate to say that the latter were considered inferior to the former, inasmuch as Denmark devoted over 50 per cent of its budget resources to implementing them. The parties concerned probably felt that legal action was not the best way of defending their economic, social and cultural rights.

18. The Government had set up a committee to study the matter of the incorporation of the Covenant into national legislation and civil society would be invited to take part in its deliberations. While the elaboration of an optional protocol to the Covenant would be a step forward, the question would need to be examined in greater detail by the Commission on Human Rights.

19. The dissemination of information relating to human rights was carried out mainly by the Danish Centre for Human Rights, which organized courses, especially on the right to development. It liaised with the Government, non-governmental organizations and universities. It was his view that NGOs did not wish to participate in either the preparation or the follow-up of the report because that was the responsibility of the Government. It was, however, important that a dialogue should be maintained with them through the Danish Centre for Human Rights, which kept them informed of the consideration of the report and the Committee's observations. Parliament and the media also kept public opinion abreast of developments.

20. Mr. RIEDEL asked whether Parliament put questions about the report to the Government. Was the report disseminated in schools and universities? What had been the result of the campaigns carried out for that purpose? Did the Government plan to take measures in that regard?

21. Mr. LEHMANN (Denmark) replied that the Government had no specific plans in that regard. The report submitted to the Committee and the latter's observations were transmitted to Parliament and to the Danish Centre for Human Rights. Parliamentarians could discuss them if they so wished. The press and NGOs were also free to initiate public discussion.

Articles 1 to 5 of the Covenant

22. Mr. HUNT requested fuller information on the way in which the provisions of the Covenant were taken into account in the legislative process. Having noted in paragraph 4 of the Government's written replies that the ministry in charge, the Ministry of Justice, and the Danish Centre for Human Rights took action to guarantee the compatibility of the laws with the international human rights instruments, he asked whether the system was effective. Were reports prepared that were accessible to the general public? How had the process worked in the case of the Integration Act?

23. He would like to know whether the Government planned to review the possibility of putting in place a non-judicial complaints procedure to deal with complaints of discrimination in the private sector.

24. Mr. RIEDEL requested additional information on the right to self-government and, more particularly, on the debate that had taken place on the self-government of the Faeroe Islands.

25. Mr. LEHMANN (Denmark) said that the competent ministries, the Ministry of Justice and the Parliament were doing everything in their power to ensure that the laws were compatible with Denmark's international commitments. The question of the establishment of a non-judicial complaints procedure had not, as far as he knew, been debated in Parliament, but the idea had been brought up.

26. With regard to the right of self-determination, he said that its application was the topic of ongoing debate. He considered that self-determination was a continuous process and that the right could be exercised in varying degrees and in different forms, i.e. through the choice of more far-reaching autonomy. The Faeroe Islands had therefore created a committee to study the possibility of expanding its autonomy, particularly at the international level. However, that was a matter for discussion by all the parliaments concerned.

27. Mr. MØLLER LYBERTH (Denmark) said that the question of Greenland's self-determination had not been settled once and for all, as attested to by the fact that Greenland's new coalition Government intended to set up a committee on foreign affairs and security policy. Thanks to its self-governing status, Greenland was entitled to develop its own political institutions at its own pace, as best suited its interests, and to adapt to the modern world.

28. Mr. BRANDSTRUP (Denmark) explained that the idea of adopting an act to promote the integration of foreigners had stemmed partly from the realization that the unemployment rate among foreigners was three times as high as that of the rest of the population, regardless of the overall employment situation. It had therefore been necessary to find a way of enhancing their chances of rapid access to the labour market, especially by upgrading their qualifications. On the question whether the Act contained elements of discrimination against foreigners, he pointed out that a similar question had already been raised in connection with article 23 of the 1951 Convention relating to the Status of Refugees at a meeting in late 1998 between UNHCR officials and representatives of the Danish Government and that UNHCR had concluded that the Act's objectives were laudable and that it did indeed aim to facilitate the rapid and full integration of foreigners into Danish society. Furthermore, the Ministry of the Interior had recently undertaken a study to evaluate the Act's impact on foreigners' housing, integration and general economic situation. The results of the study would be communicated to the Committee if it so wished.

29. Mr. HUNT, referring to the procedure for monitoring the legislation's conformity with the Covenant, asked for details on the nature of that mechanism. Was it the subject of public debate in which the opposition

parties and NGOs, for instance, could take part? He particularly wished to know how the monitoring mechanism had worked in the case of the Integration Act.

30. Mr. GRISSA requested clarifications on the conditions to be met by foreigners, including refugees and immigrants, in order to acquire Danish nationality.

31. Mr. AHMED welcomed the fact that the Danish authorities and the Office of the United Nations High Commissioner for Refugees had decided to continue to consider the Integration Act in the light of the 1951 Convention in order to ensure that it did not discriminate against newly arrived refugees. In addition, it was surprising that, in a country as socially advanced as Denmark, where the level of qualification among women was high, inequalities still existed between the two sexes in access to employment, wages and women's representation in responsible positions in the private sector. What were the Danish authorities doing to remedy that situation? With reference to discrimination against workers, he asked whether foreign seafarers working on Danish ships were still entitled only to join Danish trade unions or whether they could henceforth join the trade union of their choice.

32. Mr. LEHMANN (Denmark), explaining the Danish parliamentary procedure for the review of draft legislation, said that the Government could be called on, in its replies to the competent parliamentary committee, to show that a particular provision was in conformity with Denmark's international obligations. The procedure was entirely transparent, since the replies were given in writing, and third parties (NGOs, individuals, private companies, etc.) could express their views in Parliament on the merits of a bill. Following the parliamentary debate, the bill and the debates as a whole were usually publicized. Although, in the last resort, it was for the members of Parliament to say how Denmark was fulfilling its international obligations, the Danish State was always prepared to enter into dialogue with the monitoring bodies. In the case of the Integration Act, it had held an in-depth and constructive dialogue with UNHCR, notwithstanding the problems to which the complexity of the social welfare system gave rise and which meant that it was not always possible to make a valid comparison between an alien s situation and that of someone who had lived his entire life in Denmark from the point of view of the benefits paid to one or the other.

Article 6: Right to work

33. Mr. CEAUSU asked whether there were restrictions in Denmark, as in other countries, on foreigners' right to practise certain professions or a system linking the holder of a work permit to an employer.

34. Mr. AHMED asked whether Denmark might have to reduce retirement benefits, since the system was, as elsewhere, being undermined by the ageing of the population. Was it also true that the particularly high level of unemployment benefits in Denmark tended to dissuade beneficiaries from trying to find jobs?

35. Mr. TEXIER, commenting on Denmark's success in curbing unemployment, asked whether the Danish authorities had observed that unemployment had been

influenced by the number of working hours, especially weekly hours, and whether firms could easily resort to the technique referred to as annualization of working hours. In that connection, he also wished to know whether Danish legislation established the maximum number of hours to be worked per week, as well as a ceiling above which overtime was paid.

36. What measures were deemed necessary in Denmark to promote the return to the labour market of unemployed persons receiving social welfare, especially the long-term unemployed? In conclusion, he asked why paid sabbatical leave had been abolished in 1999 and on what conditions that benefit was currently granted.

37. Mr. GRISSA asked what the expression "green policies" in paragraph 39 referred to and how they helped reduce unemployment. What "active measures" mentioned in paragraph 40 were taken to promote employment? What did programmes involving "rotation in the occupation of posts" consist of and what effect did they have on employment?

39. Mr. SADI said that, in his view, the problem of prostitution raised both de jure and de facto questions, such as the right to work and discrimination against women, in connection with the implementation of the Covenant. Was not the fact that prostitution was legal in Denmark incompatible with the provisions of the 1949 United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, which prohibited the exploitation of the prostitution of another person, even with the consent of that person (art 1, para. 2), and provided that the parties should adopt measures for the prevention of prostitution and for the rehabilitation and social adjustment of its victims (art. 16) and undertake to adopt the necessary measures to prevent persons seeking employment from being exposed to the danger of prostitution? What were Denmark's views on that question?

40. Mrs. JIMENEZ BUTRAGUEÑO, noting that there were two contradictory trends in Europe, namely, the general ageing of the population and the rise in unemployment, asked whether the Danish Government was adopting measures to encourage companies to employ older persons and whether early retirement was encouraged in Denmark.

41. Mr. PILLAY said that the unemployment rate among foreigners was three times as high as among nationals: 18 per cent as against 6 per cent. Should it be concluded that the law enacted in 1996 to prohibit discrimination against aliens in employment had not been successful? Given Denmark's lack of a non-judicial procedure for dealing with employment disputes, he also wished to know whether the legislation in force gave aliens access to the courts and to legal aid in the event of a dispute.

42. Ms. RASMUSSEN (Denmark), replying to Mr. Texier's question, said that Denmark had no provisions governing the number of hours worked per week, which were set directly between employer and employee; however, the average was 37 hours. Nor did the State intervene in the arrangement of work schedules, which were established locally by the parties concerned. The maximum work week and the ceiling above which overtime was paid were also determined by agreements between the parties concerned.

43. Mr. LEHMANN (Denmark) said that his delegation was not currently in a position to answer the Committee members' other questions on the implementation of article 6 of the Covenant, but it would do so as soon as possible.

Article 7: Right to just and favourable conditions of work

44. Mr. CEAUSU asked whether, in view of the importance of collective agreements in Denmark, they were governed by legal provisions, whether they were applicable to non-unionized workers and whether they could conflict with a law governing employer-employee relations.

45. Mr. TEXIER asked whether there were substantial differences between the minimum wage in force in the various sectors of the economy and the different regions of the country and what procedure was applied when an employer did not abide by provisions governing the minimum wage. Were there any remedies available to the workers concerned? To what court could an employee who had been unfairly dismissed appeal? Was it a civil court or a special court? Were there any legal provisions relating to lay-offs or was that issue also governed by collective agreements?

46. Mr. ANTANOVICH asked what measures were taken by the Government to offset wage differences in the public and private sectors.

47. Ms. RASMUSSEN (Denmark) said that no minimum wage had been set in Denmark. However, collective agreements defined a basic wage that could be increased under an agreement between the employer and the employee on the basis of the latter's functions and skills. That practice, which was becoming increasingly common in the public and private sectors, made it difficult to compare the different branches. Moreover, wages could be set freely at the local level between trade union representatives and employers, provided that their level was within the limits provided for in the collective agreements.

48. There was no law governing lay-offs, but the Ministry of Labour would shortly be submitting a bill on the topic. Employees who considered that they had been unfairly dismissed could appeal to a civil court, but, in most cases, that type of action was taken to the labour courts, which had jurisdiction in that regard and were therefore more expeditious.

Article 8: Trade union rights

49. Mr. TEXIER asked whether it was illegal in a particular sector to strike during the period covered by a collective agreement and whether systematic recourse to negotiation for the settlement of work disputes in Denmark could reduce the number of working days lost each year on account of strikes.

50. He recalled that, after considering a complaint lodged by the Danish Union of Teachers, the Committee on Freedom of Association of the International Labour Organization (ILO) had deemed that teachers did not come within the category of essential staff who could be denied the right to strike. The ILO Group of Experts had, for its part, studied the question of the trade union membership of foreign seafarers employed on Swedish ships. It

would be useful for the Committee to know where those matters stood. Did the Danish Government now recognize teachers' right to strike and could foreign seafarers join Danish trade unions?

51. Mr. AHMED added that the ILO Group of Experts, which had also dealt with a complaint from the Association of Danish Dieticians, had recommended that the Danish Government should ensure that the members of that Association were not discriminated against in collective agreements. Had the Government implemented that recommendation?

52. The CHAIRPERSON thanked the members of the Danish delegation and announced that the Committee would continue its consideration of the third periodic report of Denmark at the following meeting.

The meeting rose at 1 p.m.